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1 whatever it took thereafter for her to get the
 2 store closed; is that right?
 3 A. Yes.
 4 Q. Okay. And you know from your e-mails
 5 and the Office Visions that were sent to her that
 6 she was working some nights until 11:30, maybe even
 7 until midnight or after; isn't that correct?
 8 A. That seemed to be the case.
 9 Q. Okay. So in the six days preceding
 10 your decision to give her a warning, she had worked
 11 probably in excess of 60 hours for Fred Meyer doing
 12 her job; is that right?
 13 A. There is two different weeks.
 14 Q. I understand it. But they were six
 15 days in a row. I understand it was two different
 16 weeks, but she had worked the 12th, the 13th, the
 17 14th -- Tuesday, Wednesday, Thursday -- Friday the
 18 15th, and the 16th -- right, five days? Then a new
 19 week started on the 17th, and she worked the 17th,
 20 the sixth day, and she was in for her seventh
 21 straight day when you had this meeting with her,
 22 right?
 23 A. That would be correct.
 24 Q. Did you receive a report from anybody
 25 that she had not worked her full shifts during that

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1 week?
 2 A. No, I didn't.
 3 Q. Did you receive a report from anybody
 4 that she had not worked consistently and, you know,
 5 with good intention throughout that entire time
 6 period? Did anyone tell you she was hanging out in
 7 the break room, goofing off, staring at the
 8 ceiling, sitting in the corner crying. Did anyone
 9 say that?
 10 A. Not that I remember, no. Not that --
 11 Q. You didn't have any indication -- you
 12 didn't have any concerns that she wasn't working
 13 hard, did you, during that week?
 14 A. I have no concern that she was working
 15 hard. No.
 16 Q. Okay. Now, in the month prior to when
 17 she was gone on the leave to the Philippines, had
 18 Fred Sayre ever said to you, "I'm so concerned
 19 about the recoveries in the store that I think we
 20 need to give somebody a verbal warning"? Did he
 21 ever say that --
 22 A. No.
 23 Q. -- in that month?
 24 A. No.
 25 Q. But you said that during that month,

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1 you had inconsistent recoveries the entire month;
 2 isn't that right?
 3 A. Yes. And Mr. Sayre addressed those
 4 with me.
 5 Q. Okay. Did he give you a verbal warning
 6 for them?
 7 A. He talked to me several times.
 8 Q. I'm sorry. That wasn't my question.
 9 Did he give you a verbal warning
 10 for those -- for those inconsistent recoveries?
 11 MR. DICKENS: Objection. Asked
 12 and answered. Go ahead.
 13 Q. Yes or no?
 14 MR. DICKENS: It's not a yes or
 15 no. He's already answered the question.
 16 Go ahead and answer it again.
 17 BY MR. CHOATE:
 18 Q. Did he give you a warning, such as the
 19 document there in front of you, saying, "This is a
 20 verbal warning for these inconsistent recoveries"?
 21 A. This one? No, he didn't.
 22 Q. Okay. Now, when Ms. Johnson started
 23 crying, did Mr. Sayre say, "Do you need some time
 24 to compose yourself?"
 25 A. He stopped talking, and to see if she

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1 will ask for any time. No, he didn't.
 2 Q. Did he say, "Do you need some time? Do
 3 you need to take a break?"
 4 A. No, I don't remember. I don't remember
 5 that -- him saying that, no.
 6 Q. He said, "If you leave the room" --
 7 this is what your testimony is -- "If you leave
 8 this room while you are crying and we are giving
 9 you this discipline, that's walking off the job."
 10 Isn't that what he said?
 11 A. That's not what I said.
 12 Q. That's what he said, right?
 13 A. That's not what I said he said.
 14 Q. Did he say, "If you leave this room, we
 15 are going to consider that walking off the job, and
 16 that's the end of your employment with Fred Meyer?"
 17 A. That would be more along the lines of
 18 what he said, yes.
 19 Q. What time did -- do you know what time
 20 Mr. Sayre did his tour?
 21 A. It was probably around 8:00 in the
 22 morning.
 23 Q. Okay. So about an hour after the
 24 departure opened?
 25 A. Yes.

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1 would say, like towards the end of August, middle
2 of August. I was there two weeks and I got a job.

3 Q. And what did you start doing for
4 McDonald's?

5 A. Cooking crew.

6 Q. Okay. And which McDonald's was that in
7 Fairbanks? Do you remember where it was located?

8 A. Yeah. I'm trying to remember the name
9 of the road. College Road.

10 Q. College Road? Okay. And how long did
11 you do that?

12 A. About six, seven months.

13 Q. So into the winter?

14 A. Sounds about right.

15 Q. Okay. And were you only working the
16 one job at McDonald's at the time?

17 A. No.

18 Q. Okay. Where else did you work?

19 A. In September -- September of 1991,
20 September 16 of 1991, I got hired on with Fred
21 Meyer.

22 Q. In Fairbanks?

23 A. In Fairbanks.

24 Q. And what were you hired as?

25 A. A shoes associate.

1 you do then after you stopped your McDonald's work?

2 A. I was just working at Fred Meyer.

3 Q. Okay. So full-time?

4 A. I was working 40 hours a week, correct.

5 Q. Okay. And what was your -- were you
6 still working as a shoes associate?

7 A. Yes.

8 Q. Okay. And how long did you work as a
9 shoes associate full-time at Fred Meyer in
10 Fairbanks? You started full-time in December of
11 '91?

12 A. Correct. '91 until 1993.

13 Q. Okay.

14 A. I think, if I remember, it was around
15 summertime.

16 Q. All right. And did you work any other
17 jobs during that time period?

18 A. No, I didn't.

19 Q. Okay. And did your wife continue to
20 work at Westmark?

21 A. No.

22 Q. Okay. Where did she -- what did she
23 do?

24 A. She also got hired on at Fred Meyer in
25 September of 1991.

1 Q. And what was her position there?

2 A. She was the head cashier.

3 Q. In what department?

4 A. CCK.

5 Q. I don't know what that is.

6 A. Operations.

7 Q. Okay. You are educating me as we are
8 going here on some of these things.

9 And was that full-time for her as
10 well?

11 A. That's correct.

12 Q. Okay. So by September of '92, you were
13 full-time at Fred Meyer in shoes, and your wife was
14 full-time in operations as the head cashier?

15 A. That's correct.

16 Q. Okay. And you continued until the
17 summer of, what, '93?

18 A. That's correct.

19 Q. What happened then?

20 A. I moved to -- got transferred to the
21 other Fred Meyer across town, the one on College
22 Road, to be the men's department section head.

23 Q. Was that a promotion?

24 A. It was.

25 Q. More hours or same, still -- was it

1 still an hourly job?

2 A. Hourly job.

3 Q. Okay. So it was still 40 hours per
4 week?

5 A. That's correct.

6 Q. Okay. And did your wife continue
7 working in operations?

8 A. Yes.

9 Q. Okay. And how long did you work as the
10 men's department section head at the College Road
11 Fred Meyer in Fairbanks?

12 A. For September, October of 1994.

13 Q. All right. What did you do next?

14 A. I went back to the -- got transferred
15 to the store across town again on College Road, and
16 I was working as an apparel PIC.

17 Q. Was that a promotion?

18 A. Yes.

19 Q. Okay. And was that still hourly?

20 A. Yes.

21 Q. Okay. Now, what are the
22 responsibilities of a section head?

23 A. You are responsible for a particular
24 section. In my case, it was the men's department.

25 You were responsible to make sure that you get the

1 opening, cover the middle of the day, cover
2 closing? How did you call those? I call them
3 shifts, but maybe that's not what you guys call
4 them.

5 A. Shift.

6 Q. Shift? Okay. You do call them shifts.

7 Do the shifts have a name, in
8 terms of is there morning shift or opening shift,
9 or afternoon shift, or closing shift? How is it --
10 what are they called?

11 A. If it's during the opening of the
12 store, it would be an opening shift.

13 Q. Okay.

14 A. If you were going to close the store,
15 it would be a closing shift.

16 Q. Were there any other shifts in the
17 middle?

18 A. Yes.

19 Q. Okay. What would that be called?

20 A. That would be called the swing shift.

21 Q. Okay. So what was the opening shift in
22 Fairbanks? When did it -- from store opening, how
23 long -- how many hours would that go for hourly
24 employees?

25 A. If they came in at 7:00 in the morning?

1 if the person received it or not.

2 Q. Okay. Could you get confirmation as to
3 whether -- if you said, "I want you to do X," was
4 there a way that the Office Vision would remind
5 you, "We haven't got a completion on this task
6 yet?" Was the system sophisticated enough to do
7 that?

8 A. I think there was -- that you could tag
9 your Office Vision in a way that will confirm if
10 the person received and open the note.

11 Q. Okay. So you could get a confirmation
12 receipt that they had opened it?

13 A. Yes.

14 Q. That's it; is that correct?

15 A. Yes.

16 Q. Okay. Now, you worked -- how long did
17 you work in Fairbanks as the men's apparel section
18 head?

19 A. Until 1995, February of 1995.

20 Q. And what happened then?

21 A. When I was filling in in the West
22 Fairbanks store in 1994, I entered apparel
23 management training.

24 Q. And what was apparel management
25 training?

1 three different books came into existence in terms
2 of when they started being used?

3 A. It was around 2001 -- 2000, 2001. I
4 don't remember.

5 Q. So before 2000-2001, with the training
6 book that would have been used to learn to -- to
7 learn Fred Meyer standards for recovery, would it
8 be the apparel management training book, or the
9 visual display standards book?

10 A. I think all they changed was the name
11 of the book. It was still set up in like almost a
12 three-tier, you know, difficult levels. But the
13 names changed a little bit.

14 Q. Okay. So you went through apparel
15 management training in '94?

16 A. Towards the end of 1994, getting into
17 1995.

18 Q. Okay. And then what happened?

19 A. Then I was promoted to relief assistant
20 manager and transferred to the Soldotna store.

21 Q. And is a relief assistant manager now
22 known as the second assistant manager?

23 A. Yes.

24 Q. Okay. How is a relief assistant

25 manager different than a PIC?

1 A. Well, PIC is not a position. PIC is a
2 function.

3 Q. Okay. So can a relief assistant
4 manager be a PIC?

5 A. Yes.

6 Q. Okay. Can a manager be a PIC?

7 A. Yes.

8 Q. Okay. So "PIC" just means someone who
9 has the function of being in charge at a certain
10 time; is that correct?

11 A. Person in charge, yes.

12 Q. Okay. And how long did you work at the
13 Soldotna store as a relief assistant manager?

14 A. Until January of 1996.

15 Q. All right. And what did you do next
16 then?

17 A. Then I was asked by my regional
18 supervisor to come to Juneau, to come down to the
19 Juneau store.

20 Q. Okay. Were you still going to be a
21 relief assistant manager?

22 A. No. It was going to be a promotion.
23 There was an opening at this location for an
24 apparel manager. The apparel manager was getting
25 transferred to the Tillamook store. And then -- so

1 go to personnel, HR, at Fred Meyer?

2 A. I think it's kept at the store.

3 Q. Okay. And where are they kept at the
4 store?

5 A. They'll be on the HR -- HRC office.

6 Q. Okay. And where is the HRC office?

7 A. In our store?

8 Q. Uh-huh.

9 A. It is located right by the manager's
10 office or director's office, in back of the
11 stockroom flight of stairs, by the training room.

12 Q. And were copies of verbal warnings
13 placed in employees' personnel files?

14 A. If -- the ones that is like actually
15 written?

16 Q. Yes.

17 A. There will be -- a copy will be put in
18 the personnel file.

19 Q. Do you ever recall giving Myrna Johnson
20 a verbal warning that was written between 1996,
21 fall of '96, and February of 2001?

22 A. No.

23 Q. Okay. Do you recall ever hearing
24 anyone else gave her any form of discipline during
25 that time period?

1 A. No.

2 Q. Okay.

3 MR. CHOATE: Why don't we take
4 another break?

5 THE REPORTER: All right. This
6 will be the end of videotape No. 1. It is now
7 11:09 a.m. We'll go off record.

8 11:09 AM

9 (Off record)

10 11:28 AM

11 THE REPORTER: We're back on
12 record after a brief break. This is the beginning
13 of videotape No. 2. It is 11:28 a.m. You may
14 proceed.

15 BY MR. CHOATE:

16 Q. Mr. San Miguel, if I wanted to find out
17 Fred Meyer's disciplinary policies, could I look in
18 the policy manual for that information?

19 A. I think so, yes.

20 Q. How about the employee handbook?

21 A. I don't know to what extent they
22 explain it in the handbook.

23 Q. Is there any other place for
24 information regarding disciplinary policies, other
25 than the policy manual, that you are aware of?

1 the separation was not something you initially
2 wanted?

3 A. That's correct.

4 Q. Okay. Isn't it correct that your wife
5 had, unknown to you, developed a relationship with
6 an older man and wanted to be involved with him
7 rather than you? Isn't that right?

8 A. I wasn't able to prove it. So I don't
9 know. I --

10 Q. Was that your suspicion? Was that what
11 you told other people?

12 A. Yes.

13 Q. Okay. And, in fact, that was pretty
14 emotionally devastating for you as a husband and as
15 a man, wasn't it?

16 A. Yes.

17 Q. Okay. And you are a big guy.
18 Physically, you are a good-sized guy, but, in fact,
19 I think in that time period you had a pretty tender
20 heart. Isn't that right?

21 A. You can say that.

22 Q. And I'm not saying that in a bad way at
23 all, okay?

24 When you separated from your wife,
25 there was a time period when you were having a

1 tough time dealing with losing your marriage; isn't
2 that right?

3 A. Yes.

4 Q. Okay. And did that -- was that
5 reflected in -- did you have trouble at work
6 because of that in terms of concentrating and
7 paying attention?

8 A. Yes.

9 Q. Okay. And you guys have children,
10 right?

11 A. Yes, we do.

12 Q. Okay. And there are two kids?

13 A. One.

14 Q. One child? And is that a boy?

15 A. It's a boy.

16 Q. Okay. And he's a -- you're a baseball
17 player, right?

18 A. I play baseball, yes.

19 Q. And you were doing everything you could
20 to keep your relationship with your son while
21 dealing with the stuff with your wife, right?

22 A. That's correct.

23 Q. Okay. So did you find that you'd
24 leave work at times, either because you were
25 emotionally upset or to take care of your son,

1 during the spring of 2001?

2 A. On occasions.

3 Q. And when you were -- and did you have
4 occasions at work when you really would break down
5 and cry because you felt so bad about what
6 happened?

7 A. I'm sure I became very upset.

8 Q. And you cried, right?

9 A. Sure.

10 Q. Okay. And when you were having
11 something which is clearly very important to you,
12 your marriage, having -- losing it, was there
13 somebody -- were you able to look to Myrna Johnson
14 at work to keep the fort, you know, to keep
15 everything going while you were dealing with your
16 emotional problems?

17 A. Is there a question?

18 Q. My question is, were you able to --
19 when you were emotionally upset and having
20 difficulties concentrating and focusing and having
21 to leave work early or go out and do things, were
22 you able to depend on Myrna Johnson to keep things
23 going while you were doing that?

24 A. Yes.

25 Q. And do you recall her saying to you

1 many times, "Don't worry, Jaime, I'll keep the
2 fort. I'll keep everything going here. You take
3 care of these things"?

4 A. Yes.

5 Q. Okay. And could you depend upon her to
6 do that?

7 A. Yes.

8 Q. Okay. And was she not only a good
9 employee, but a good friend during that really hard
10 time you went through?

11 A. She was.

12 Q. Okay. And about how long did that kind
13 of period of emotional turbulence go on for you
14 where it was just -- it was really -- it was tough?
15 How long did that happen? How long did that go on?

16 A. I would say the first six weeks. You
17 know, first it was pretty emotional and then I
18 started getting -- after six weeks, I was able to
19 concentrate on work and do other things and be
20 clear on what needs to be done, kind of get the
21 emotional part out of it.

22 Q. So if you guys separated on
23 January 1st -- that's when you left the house?

24 A. Shortly after that.

25 Q. Shortly after that. Okay. And then do

1 (Off record)

2 (Ms. Johnson is not present)

3 1:20 PM

4 THE REPORTER: We're back on
5 record following a lunch break. It is 1:20 p.m.
6 You may proceed.

7 BY MR. CHOATE:

8 Q. Mr. San Miguel, during the fall of
9 2001, did you ever give any verbal warnings to
10 Ms. Johnson?

11 A. I don't recall if I did or not.

12 Q. Okay. Could you explain to me under
13 what situations a verbal warning stays verbal, and
14 in what situations it actually gets recorded in a
15 written form as a verbal warning?

16 A. For verbal warning, it would be if we
17 are talking about the same issue over, say, three
18 or four days' time period, like a particular task
19 is not completed. And the first time, you know,
20 we'll go, "Okay. How come this wasn't done?" And
21 then I will listen to the reason why it wasn't
22 done. And then we'll say, "Okay. Well, today it
23 needs to be completed."

24 And if it happens again, I think
25 like the third time will be a verbal warning, where

1 it's just like, "Okay. This need to get done
2 today."

3 And if it continues to be a
4 serious offense, that's when I -- then we'll sit
5 down and have it in a written form -- it is still
6 verbal -- but in a written form so they will
7 understand that that particular behavior -- or that
8 particular project has to be completed in a timely
9 manner.

10 Q. And do you use a form that's produced
11 by Fred Meyer for that written notice of a verbal
12 warning? Is that the same form that's used for the
13 written reprimand or written warning?

14 A. It would be the same form.

15 Q. Same form?

16 A. Yes.

17 Q. It is just something different is
18 checked? Is the little square not checked for
19 prior verbal warning? How is the form different?

20 A. No, it is the same form. Now, on the
21 meeting with the employee, we'll state if it is a
22 verbal warning, or this is an actual write-up, or
23 if it is a three-day suspension at the meeting with
24 the employee.

25 Q. Okay. Now, in January 2002, did

1 was through e-mail. And she'll come in, and we'll
2 talk -- you know, we'll take a time, or set a time
3 aside to talk about this. So, yes, this is part of
4 what we are calling a verbal warning. We are
5 talking about things that not being completed, and
6 they need to be addressed.

7 Q. Okay. But a verbal warning is a
8 discipline issue, isn't it? A verbal warning is a
9 beginning of discipline of an employee who is not
10 doing their job correctly; isn't that right?

11 A. That would be a way for us to address,
12 yeah, if something is not being completed
13 correctly.

14 Q. Okay. And so within 48 -- well,
15 actually, within one day of her arriving from her
16 family -- or her personal and family leave in the
17 Philippines, you have given her, is that my
18 understanding, a verbal warning, beginning of
19 discipline that she's not doing her job correctly?

20 A. We were addressing the fact that, yeah,
21 some of these tasks were not being completed.

22 Q. Well, not that they just weren't being
23 completed, but that they -- that you thought it was
24 of a disciplinary consequence. It was initiation
25 of a disciplinary procedure; is that right?

1 A. Yes.

2 Q. Okay. Now, and that began -- was this
3 e-mail, Exhibit No. 12, is this a verbal warning
4 that is dated the 13th from you to her?

5 A. No. I think this was just
6 addressing -- on the 12, like I said, I don't know
7 if we are missing another e-mail here, or what we
8 talked about that day. Was more addressing things
9 that -- "Hey, this is some of the things that
10 needed to get done last night. It didn't get done.
11 We need to get it done tonight."

12 Q. Okay. And was the -- well, was the
13 e-mail that is in reference in Exhibit No. 10, the
14 Office Vision, No. 10, was that a verbal warning,
15 or did that reflect a verbal warning that was given
16 to her?

17 A. I think that by this that would
18 start -- you know, in this e-mail we are addressing
19 still all the areas that didn't get done.

20 Q. My question is, is this a verbal
21 warning or referencing a verbal warning that was
22 given to her orally in the day regarding the
23 recovery on the 12th?

24 A. No, I don't think so.

25 Q. Okay. Why don't you tell me, then,

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1 A. The purpose of the meeting was to talk
2 to Ms. Johnson about some of this situation that we
3 were already addressing in the e-mails, and then to
4 issue a verbal warning, that she understood what
5 the expectations were, what it was that we were
6 looking for, and try to find out if there was a
7 reason why she was not being able to complete these
8 things. Because to that point, she hasn't said
9 anything about -- to me about being shorthanded.
10 She said she could handle everything and whatnot,
11 but still some of the things were not getting done.

12 So the first step was to find out
13 if there was a reason or a problem as to why it
14 wasn't getting done. And then after, we'll discuss
15 what we are going to set for the standard, what is
16 it that we're looking for the next day.

17 So that was going to be a verbal
18 warning that we were going to -- I don't know. I
19 used the word before -- in the written form.

20 Q. Now, is it a practice to issue verbal
21 warnings with the director?

22 A. For a salaried -- for salaried
23 employees, yes.

24 Q. Well, then, on the 16th, when you sent
25 this e-mail, was that a verbal warning? Did

1 Mr. Sayre participate in that?

2 A. Well, because that one, again, like I
3 said, it was not going to be -- it was a
4 conversation. It was not going to be put in her
5 personnel file.

6 Q. So are there two different kinds of
7 verbal warnings then?

8 A. I'll talk to an employee out on the
9 floor, let them know, again, whatever the situation
10 is. And I said, "Look, if this doesn't get done,
11 then we are going to have go upstairs and then
12 we'll talk about it."

13 And then you have the option,
14 depending on what the infraction is, to either give
15 her a verbal warning, which we'll document. There
16 are some infractions where we have a three-day
17 suspension. Some are a straight write-up. Some
18 are termination of employment.

19 Q. Is this -- is the Exhibit No. 18, which
20 is a copy called "Employee Warning Notice," is this
21 a verbal warning or a written warning?

22 A. This was going to be a verbal warning,
23 that we were going to document that we did, in
24 fact, talk to her that day about these items.

25 Q. So is there something -- is there

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1 A. Well, once she walked off the job, I
2 would say, you know, a few minutes elapsed. I
3 can't remember exactly, maybe five, seven minutes.
4 Mr. Sayre placed a call -- I'm almost certain it
5 was to the regional office to inform regional staff
6 what happened. I was not in the office when --
7 when he placed the call, I was there. Then I left
8 because I got a phone call to go on the -- on the
9 floor, which I did.

10 And by the time I came back, I was
11 in the office not even a minute or two, and we
12 still kind of -- as I said earlier, were kind of
13 shocked at -- you know. So -- I wanted just to
14 have my assistant manager improve her performance.
15 Now, all of a sudden, I don't have an assistant
16 manager. And it started coming down to me. It's
17 like, "Oh, wow, now I don't have an assistant
18 manager." And she came into the office and asked
19 for a copy of the form.

20 Q. And what happened then?

21 A. At that point, Mr. Sayre and I tried to
22 like talk to her, and she just said she didn't want
23 to talk to us. And she just wanted a copy and
24 wanted to leave, and she left.

25 Q. Did Mr. Sayre make any other comment

1 you had inconsistent recoveries the entire month;
2 isn't that right?

3 A. Yes. And Mr. Sayre addressed those
4 with me.

5 Q. Okay. Did he give you a verbal warning
6 for them?

7 A. He talked to me several times.

8 Q. I'm sorry. That wasn't my question.

9 Did he give you a verbal warning
10 for those -- for those inconsistent recoveries?

11 MR. DICKENS: Objection. Asked
12 and answered. Go ahead.

13 Q. Yes or no?

14 MR. DICKENS: It's not a yes or
15 no. He's already answered the question.

16 Go ahead and answer it again.

17 BY MR. CHOATE:

18 Q. Did he give you a warning, such as the
19 document there in front of you, saying, "This is a
20 verbal warning for these inconsistent recoveries"?

21 A. This one? No, he didn't.

22 Q. Okay. Now, when Ms. Johnson started
23 crying, did Mr. Sayre say, "Do you need some time
24 to compose yourself?

25 A. He stopped talking, and to see if she

1 will ask for any time. No, he didn't.

2 Q. Did he say, "Do you need some time? Do
3 you need to take a break?"

4 A. No, I don't remember. I don't remember
5 that -- him saying that, no.

6 Q. He said, "If you leave the room" --
7 this is what your testimony is -- "If you leave
8 this room while you are crying and we are giving
9 you this discipline, that's walking off the job."
10 Isn't that what he said?

11 A. That's not what I said.

12 Q. That's what he said, right?

13 A. That's not what I said he said.

14 Q. Did he say, "If you leave this room, we
15 are going to consider that walking off the job, and
16 that's the end of your employment with Fred Meyer?"

17 A. That would be more along the lines of
18 what he said, yes.

19 Q. What time did -- do you know what time
20 Mr. Sayre did his tour?

21 A. It was probably around 8:00 in the
22 morning.

23 Q. Okay. So about an hour after the
24 department opened?

25 A. Yes.